

purposes consistent with the requirements of the Act, including to meet working capital needs. Unifil Energy and Fitchburg are expected, in turn, to use any funds contributed by Unifil to repay outstanding short-term indebtedness incurred for additions, extensions and betterments to their respective property, plant and equipment and to finance future expenditures for additions, extensions and betterments to property, plant and equipment. Unifil represents that no proceeds from any offering authorized in any order of the Commission issued on the Application will be used (i) to acquire any exempt wholesale generators or foreign utility companies, as those terms are defined in sections 32 and 33 of the Act, respectively; or (ii) to acquire or form a new subsidiary unless that financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48447; File No. SR-CHX-2003-15]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change to Amend the CHX Membership Dues and Fees Schedule to Increase the Specialist Tape Credits for Certain Trades in Tape A and Tape B Securities

September 4, 2003.

I. Introduction

On June 2, 2003, The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the specialist tape credits for certain trades in Tape A and Tape B securities. The proposed rule change was published for comment in the **Federal Register** on June 30, 2003.³

The Commission received one comment on the proposal.⁴ On August 11, 2003, the CHX responded to the comment letter.⁵ This order grants approval to the proposed rule change.

II. Summary of Comments

The NYSE expressed its opposition to "all market data rebates and other forms of payment for order flow" as being inconsistent with the Act and the protection of investors.⁶ The NYSE stated that the CHX "currently rebates nothing for trades in Nasdaq securities, rebates as much as 50 percent of market data revenues for trades in Tape B securities, and rebates more than 50 percent of market data revenues for certain trades in Tape A securities." The proposed rule change, according to the NYSE, "would exacerbate this disparity, permitting CHX to provide greater economic incentives to specialist firms to purchase Tape A order flow than to purchase Nasdaq and Tape B order flow."⁷ Because the CHX offers "no rationale for different rebate levels based on the market on which a security is listed" the NYSE asks the Commission to institute disapproval proceedings with respect to the proposed rule change.⁸

In its response to the NYSE Letter, the CHX states that its rules with regard to market data revenue sharing programs are consistent with Commission staff guidance.⁹ Additionally, the CHX explains that its Tape A credit program "provides only the possibility of a 70% tape credit" and that the rates delineated in the CHX's fee schedule "are marginal rates and thus apply only to those transactions that exceed identified thresholds."¹⁰ Furthermore, the CHX states its market share in Tape A issues has declined, and that it shared "less than 20% of its overall Tape A market data revenues with Exchange specialists" in June 2003.¹¹

III. Discussion and Commission Findings

As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation

Order"),¹² the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the CHX to modify the tape credits available to CHX specialists for trades in Tape A and Tape B securities as described in the instant proposed rule change.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, the requirements of section 6 of the Act¹⁴ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁵ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the CHX to increase the tape credits for trades in Tape A and Tape B securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁶, that the proposed rule change (SR-CHX-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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⁴ See July 22, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter").

⁵ See August 11, 2003 letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to John S. Polise, Senior Special Counsel, and Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission ("CHX Letter").

⁶ NYSE Letter at 2.

⁷ *Id.*

⁸ *Id.*

⁹ CHX Letter at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48076 (June 23, 2003), 68 FR 38732.